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OFFICE OF PETITIONS

In re Application of
Li et al.
Application No. 10/039,242
Filed: December 31, 2001
Attorney Docket No. 00-17

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed August 13, 2002, under 37 C.F.R. §1.47(a) (certificate of mailing date August 6, 2002).

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on December 31, 2001, without an executed oath or declaration. Accordingly, on February 6, 2002, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of April 6, 2002.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, a statement from Abigail Murphy of WaveSplitter Technologies, inc, and a partially executed declaration. To make timely a request for a four (4) month extension of time was submitted with the petition.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition does not satisfy requirements: (1).

As to item (1), Rule 47 applicant has failed to show that the non-signing inventor

refused to sign the declaration after having been presented with the application papers (specification, including claims, drawings, and oath or declaration). See MPEP 409.03(d). The statement of Abigail Murphy states efforts were made to obtain the signature of inventor Kevin Sullivan on the declaration and the assignment document. However, there is no indication application papers (specification, including claims, drawings, and oath or declaration) were mailed to inventor Sullivan. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor.

Thus on renewed petition, rule 47 applicant must establish the **entire** application package (including specification, claims and drawings) was presented to the non-signing inventor and he refused to sign.


Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.


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